

1 shall not grant consent to the location, placement or
2 construction of ditches, drains, track, rails, poles, wires,
3 pipe line or other equipment upon, under or along any such
4 non-toll federal-aid fully access-controlled State highway,
5 which:

6 (1) would require cutting the pavement structure
7 portion of such highway for installation or, except in
8 the event of an emergency, would require the use of any
9 part of such highway right-of-way for purposes of
10 maintenance or repair. Where, however, the State highway
11 authority determines prior to installation that there is
12 no other access available for maintenance or repair
13 purposes, use by the entity of such highway right-of-way
14 shall be permitted for such purposes in strict accordance
15 with the rules, regulations and specifications of the
16 State highway authority, provided however, that except in
17 the case of access to bridge structures, in no such case
18 shall an entity be permitted access from the
19 through-travel lanes, shoulders or ramps of the non-toll
20 federal-aid fully access-controlled State highway to
21 maintain or repair its accommodation; or

22 (2) would in the judgment of the State highway
23 authority, endanger or impair any such ditches, drains,
24 track, rails, poles, wires, pipe lines or other equipment
25 already in place; or

26 (3) would, if installed longitudinally within the
27 access control lines of such highway, be above ground
28 after installation except that the State highway
29 authority may consent to any above ground installation
30 upon, under or along any bridge, interchange or grade
31 separation within the right-of-way which installation is
32 otherwise in compliance with this Section and any rules,
33 regulations or specifications issued hereunder; or

34 (4) would be inconsistent with Federal law or with

1 rules, regulations or directives of appropriate Federal
2 agencies.

3 (d) In the case of accommodations upon, under or along
4 non-toll federal-aid fully access-controlled State highways
5 the State highway authority may charge an entity reasonable
6 compensation for the right of that entity to longitudinally
7 locate, place or construct ditches, drains, track, rails,
8 poles, wires, pipe line or other equipment upon, under or
9 along such highway. Such compensation may include in-kind
10 compensation.

11 Where the entity applying for use of a non-toll
12 federal-aid fully access-controlled State highway
13 right-of-way is a public utility company, municipal
14 corporation or other public or private corporation,
15 association or person, such compensation shall be based upon
16 but shall not exceed a reasonable estimate by the State
17 highway authority of the fair market value of an easement or
18 leasehold for such use of the highway right-of-way. Where
19 the State highway authority determines that the applied-for
20 use of such highway right-of-way is for private land uses by
21 an individual and not for commercial purposes, the State
22 highway authority may charge a lesser fee than would be
23 charged a public utility company, municipal corporation or
24 other public or private corporation or association as
25 compensation for the use of the non-toll federal-aid fully
26 access-controlled State highway right-of-way. In no case
27 shall the written consent of the State highway authority give
28 or be construed to give any entity any easement, leasehold or
29 other property interest of any kind in, upon, under, above or
30 along the non-toll federal-aid fully access-controlled State
31 highway right-of-way.

32 Where the compensation from any entity is in whole or in
33 part a fee, such fee may be reasonably set, at the election
34 of the State highway authority, in the form of a single lump

1 sum payment or a schedule of payments. All such fees charged
2 as compensation may be reviewed and adjusted upward by the
3 State highway authority once every 5 years provided that any
4 such adjustment shall be based on changes in the fair market
5 value of an easement or leasehold for such use of the
6 non-toll federal-aid fully access-controlled State highway
7 right-of-way. All such fees received as compensation by the
8 State highway authority shall be deposited in the Road Fund.

9 (e) Any entity applying for consent shall submit such
10 information in such form and detail to the appropriate
11 highway authority as to allow the authority to evaluate the
12 entity's application. In the case of accommodations upon,
13 under or along non-toll federal-aid fully access-controlled
14 State highways the entity applying for such consent shall
15 reimburse the State highway authority for all of the
16 authority's reasonable expenses in evaluating that entity's
17 application, including but not limited to engineering and
18 legal fees.

19 (f) Any ditches, drains, track, rails, poles, wires,
20 pipe line or other equipment located, placed or constructed
21 upon, under or along a State highway with the consent of the
22 State highway authority under this Section shall, upon
23 written notice by the State, highway authority be subject to
24 removal, relocation or modification at no expense to the
25 State highway authority when and as deemed necessary by the
26 State highway authority for highway or highway safety
27 purposes. If, within 60 days after receipt of such written
28 notice, arrangements are not made satisfactory to the State
29 highway authority for such removal, relocation or
30 modification, the State highway authority may remove,
31 relocate or modify such ditches, drains, track, rails, poles,
32 wires, pipe line or other equipment and bill the owner
33 thereof for the total cost of such removal, relocation or
34 modification. The State highway authority shall determine

1 the terms of payment of those costs provided that all costs
2 billed by the State highway authority shall not be made
3 payable over more than a 5 year period from the date of
4 billing. This paragraph shall not be construed to prohibit
5 the State highway authority from paying any part of the cost
6 of removal, relocation or modification where such payment is
7 otherwise provided for by State or federal statute or
8 regulation. If 90 days after written notice was given, the
9 ditches, drains, track, rails, poles, pipes, lines, or other
10 equipment have not been removed, relocated, or modified to
11 the satisfaction of the State highway authority, the owner of
12 the drains, track, rails, poles, pipes, lines, or other
13 equipment located along the State highway is in breach of the
14 written consent and is subject to liquidated damages of not
15 more than \$500 per day. Neither the State nor any contractor
16 hired by the State under this subsection (f) to remove,
17 relocate, or modify the drains, track, rails, poles, pipes,
18 lines, or other equipment located along the State highway is
19 liable or responsible for any resulting injury to persons or
20 damage to property.

21 (g) It shall be the sole responsibility of the entity,
22 without expense to the State highway authority, to maintain
23 and repair its ditches, drains, track, rails, poles, wires,
24 pipe line or other equipment after it is located, placed or
25 constructed upon, under or along any State highway and in no
26 case shall the State highway authority thereafter be liable
27 or responsible to the entity for any damages or liability of
28 any kind whatsoever incurred by the entity or to the entity's
29 ditches, drains, track, rails, poles, wires, pipe line or
30 other equipment.

31 (h) Upon receipt of an application therefor, consent to
32 so use a highway may be granted subject to such terms and
33 conditions not inconsistent with this Code as the highway
34 authority deems for the best interest of the public. The

1 petitioner shall pay to the owners of property abutting upon
2 the affected highways established as though by common law
3 plat all damages the owners may sustain by reason of such use
4 of the highway, such damages to be ascertained and paid in
5 the manner provided by law for the exercise of the right of
6 eminent domain.

7 (i) Such consent shall be granted by the Department in
8 the case of a State highway; by the county board or its
9 designated county superintendent of highways in the case of a
10 county highway; by either the highway commissioner or the
11 county superintendent of highways in the case of a township
12 or district road, provided that if consent is granted by the
13 highway commissioner, the petition shall be filed with the
14 commissioner at least 30 days prior to the proposed date of
15 the beginning of construction, and that if written consent is
16 not given by the commissioner within 30 days after receipt
17 of the petition, the applicant may make written application
18 to the county superintendent of highways for consent to the
19 construction. This Section does not vitiate, extend or
20 otherwise affect any consent granted in accordance with law
21 prior to the effective date of this Code to so use any
22 highway.

23 (j) Nothing in this Section shall limit the right of a
24 highway authority to permit the location, placement or
25 construction or any ditches, drains, track, rails, poles,
26 wires, pipe line or other equipment upon, under or along any
27 highway or road as a part of its highway or road facilities
28 or which the highway authority determines is necessary to
29 service facilities required for operating the highway or
30 road, including rest areas and weigh stations.

31 (k) Paragraphs (c) and (d) of this Section shall not
32 apply to any accommodation located, placed or constructed
33 with the consent of the State highway authority upon, under
34 or along any non-toll federal-aid fully access-controlled

1 State highway prior to July 1, 1984, provided that
2 accommodation was otherwise in compliance with the rules,
3 regulations and specifications of the State highway
4 authority.

5 (1) The consent to be granted pursuant to this Section
6 by the appropriate highway authority shall be effective only
7 to the extent of the property interest of the State or
8 government unit served by that highway authority. Such
9 consent shall not be binding on any owner of the fee over or
10 under which the highway or road is located and shall not
11 otherwise relieve the entity granted that consent from
12 obtaining by purchase, condemnation or otherwise the
13 necessary approval of any owner of the fee over or under
14 which the highway or road is located. This paragraph shall
15 not be construed as a limitation on the use for highway or
16 road purposes of the land or other property interests
17 acquired by the public for highway or road purposes,
18 including the space under or above such right-of-way.

19 (Source: P.A. 85-540.)".